

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>EVOLVED INGENUITY, LLC, a</b>	}	
<b>Texas limited liability company, and</b>	}	
<b>WILLIAM H. FARGASON, III</b>	}	
	}	
<b>Plaintiffs,</b>	}	<b>CIVIL ACTION NO.</b>
	}	
<b>vs.</b>	}	_____
	}	
<b>NEW BUFFALO CORPORATION, a</b>	}	
<b>Missouri corporation,</b>	}	
	}	
<b>Defendant.</b>	}	<b>JURY TRIAL DEMANDED</b>

**PLAINTIFFS' ORIGINAL COMPLAINT**

NOW COME EVOLVED INGENUITY, LLC (“Evolved”) and WILLIAM H. FARGASON, III (“Fargason”), (collectively “Plaintiffs”), by and through their attorneys, to make and file their Plaintiffs’ Original Complaint against Defendant, NEW BUFFALO CORPORATION (hereinafter referred to as “New Buffalo” or “Defendant”), and for cause of action would respectfully show the Court as follows:

**PARTIES**

1. Plaintiff, EVOLVED INGENUITY, LLC, is a limited liability company, organized under the laws of the State of Texas, having its principal place of business in Grand Prairie, Texas.

2. Plaintiff, WILLIAM H. FARGASON, III, is an individual residing in Bessemer, Alabama.

3. Defendant, NEW BUFFALO COPORATION, is a corporation, organized under the laws of the State of Missouri, having its principal place of business at 950 Hoff Road, O’Fallon, Missouri 63366. New Buffalo maybe served with process through its registered Martin V. Ahrens at 950 Hoff Road, O’Fallon, Missouri 63366.

### **JURISDICTION AND VENUE**

4. This is an action for infringement of at least one United States patent. The Court has jurisdiction over the subject matter in this case based upon federal question under 28 U.S.C. §1338(a).

5. New Buffalo does business in Texas. New Buffalo advertises and sells products, including the accused product, in Texas, including without limitation, in the Eastern District of Texas and is thus engaging in infringement in the Eastern District. Jurisdiction over New Buffalo is proper in Texas and therefore pursuant to 28 U.S.C. §1391(c)(2). New Buffalo resides in the Eastern District of Texas. Venue is proper in this district and division under 28 USC §1391(b)(1) and (2); and 28 U.S.C. §1400(b).

### **PATENT INFRINGEMENT**

6. U.S. Patent No. 8,042,865 (the “‘865 Patent”), entitled “Tent Chair” was duly and legally issued by the United States Patent and Trademark Office on October 25, 2011. U.S. Patent No. 7,527,331 (the “‘331 Patent”), also entitled “Tent Chair” was duly and legally issued by the United States Patent and Trademark Office on May 5, 2009.

7. Both the ‘865 Patent and the ‘331 Patent were issued to Fargason. Evolved is an exclusive licensee of the ‘865 and ‘331 Patents and sells the Tent Chair in the United States marked with one or more of the Patents.

8. New Buffalo is selling and offering to sell hunting chair blinds, at least one model of which is designated as HUBL2. New Buffalo’s hunting chair blinds are available for sale from retailers both on-line and in stores for purchase through the United States, including Texas and specifically within the Eastern District of Texas.

9. By reason of New Buffalo’s commercial activities relating to the hunting chair blind, New Buffalo is directly infringing the ‘865 and ‘331 Patents, as well as contributorily

infringing and inducing infringement of the '865 and '331 Patents.

10. New Buffalo will continue to infringe unless enjoined by the Court pursuant to 35 U.S.C. §283. Evolved and Fargason have suffered damages due to New Buffalo's infringing actions pursuant to 35 U.S.C. §284.

11. New Buffalo's infringement is, on information and belief, willful, making this an exceptional case.

12. As a result of the exceptional case of infringement, Plaintiffs have incurred reasonable attorney's fees and costs to which they are entitled to recover. Further, in the event of an appeal, Plaintiffs will incur additional attorney's fees and costs to which they are entitled to recover pursuant to 35 U.S.C. §285.

13. Plaintiffs request a trial by jury in this case.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs, EVOLVED INGENUITY and FARGASON respectfully pray that upon trial on the merits this Court render judgment in Plaintiffs' favor and against the Defendant, NEW BUFFALO CORPORATION, as follows:

A. Defendant be preliminarily and permanently enjoined from infringing U.S. Patent Nos. 8,042,865 and 7,527,331 in any manner;

B. Defendant be ordered to deliver up for destruction all articles that infringe the Patents;

C. Defendant be ordered to pay Plaintiffs' actual damages for infringing the Patents;

D. Defendant be ordered to pay Plaintiffs three (3) times the amount of actual damages for willfully infringing the Patents;

E. Defendant be ordered to pay interest, costs and attorney's fees to Plaintiffs; and

F. For general and such further and other relief, at law or in equity, as to which Plaintiffs may show themselves to be entitled.

Date: August 28, 2013

Respectfully submitted,

/s/ Daniel L. Bates

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